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**THIS DISPOSITION
IS NOT CITABLE AS PRECEDENT
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Paper No. 16
TEH

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **Ocean Apparel, Inc.**

Serial No. 75/348,636

C. Douglas McDonald of Carlton, Fields, Ward, Emmanuel, Smith & Cutler, P.A. for Ocean Apparel, Inc.

Daniel P. Vavonese, Trademark Examining Attorney, Law Office 109
(Ronald R. Sussman, Managing Attorney).

Before Wendel, Holtzman and Rogers, Administrative Trademark Judges.

Opinion by Holtzman, Administrative Trademark Judge:

An application has been filed by Ocean Apparel, Inc. to register NAVY + GREEN as a mark for goods which were subsequently amended to "clothing, namely pants and shorts."¹

¹ Serial No. 75/348,636; filed August 26, 1997 on the Principal Register alleging a bona fide intention to use the mark in commerce. On November 19, 1998, applicant filed an amendment to allege use asserting dates of first use and first use in commerce on July 15, 1998.

Registration has been finally refused under Section 2(e)(1) of the Trademark Act on the ground that applicant's mark is merely descriptive of applicant's goods.

Applicant has appealed. Applicant and the Examining Attorney filed briefs, and applicant filed a reply brief. An oral hearing was not requested.

Applicant's reply brief was accompanied by a request to amend its identification of goods from "clothing, namely pants, shorts, jeans, shirts, jackets, blouses, knit shirts, swimwear, sweaters, skirts" to the present identification, "clothing, namely pants and shorts." The Trademark Examining Attorney approved the amendment but maintained the refusal to register. Applicant's reason for the amendment will be addressed later in this decision.

A term is merely descriptive within the meaning of Section 2(e)(1) if it immediately conveys knowledge of the ingredients, qualities, or characteristics of the goods or services with which it is used. In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987).

We agree with the Examining Attorney that the term NAVY + GREEN, when used in connection with clothing directly conveys information about their color, a significant characteristic of the goods. The Examining Attorney has submitted an entry from *The Pantone Book of Color* 79 (1990) identifying "navy" as a

particular color and a dictionary listing defining "navy" as the color "navy blue." The Examining Attorney has also submitted numerous excerpts of articles from the NEXIS database showing that "navy" and "green," either alone or in combination, are not only commonly used, but are traditional and even popular colors for everyday attire. It is also clear, based on the dictionary references submitted by the Examining Attorney,² that the symbol "+" would be viewed in the context of this mark as a conjunctive variation of the word "and" so that the mark would be understood by purchasers of the identified goods to be the equivalent of "NAVY AND GREEN."

Applicant does not dispute that color is a significant attribute of clothing or that each word in the mark identifies a particular color. Applicant argues instead that the words "navy" and "green" have a variety of other meanings which would not be descriptive of its goods. Relying on *In re Colonial stores Incorporated*, 394 F.2d 549, 157 USPQ 382 (CCPA 1968), applicant argues that its mark, like SUGAR & SPICE in that case, is not "merely" descriptive because as a "composite" the mark "conjure[s] up several images in the consuming public's mind." (Applicant's brief p.5). Applicant points out that the word

² The Board may properly take judicial notice of dictionary definitions. See *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

"navy" has a "primary" meaning referring to "all of a nation's warships" and that other definitions of the word "green" include "leafy plants" and "not mature or ripe."

It is true that the words "navy" and "green" have other non-descriptive meanings. However, the only plausible meaning of these words in relation to clothing is color. The question of whether a particular term is merely descriptive must be determined not in the abstract, but in relation to the goods or services for which registration is sought, the context in which the term is used, and the possible significance that the term is likely to have to the average purchaser as he encounters the goods or services in the marketplace. See *In re Engineering Systems Corp.*, 2 USPQ2d 1075 (TTAB 1986). Because color is such a significant aspect of clothing, purchasers will naturally associate the words "navy" and "green" with color. The display of the mark on some of applicant's hangtags with the very navy and green color combination described in the mark reinforces this association.

In this regard, applicant's reliance on *In re Colonial Stores Incorporated*, supra, is misplaced. Unlike the mark SUGAR & SPICE in that case, by combining "navy" with "green," applicant has not created a unitary, nondescriptive term. If anything, the combination of these words reinforces the descriptive meaning of each individual word. It would not be reasonable to assume that

purchasers would associate the word "green" in this mark with meanings other than color such as "leafy plants" or "immaturity" when "green" is used in combination with the word "navy," or that the word "navy" would evoke the impression of a fleet of warships when used in conjunction with the word "green."

As a final point, we note applicant's argument that the mark is not descriptive "since [in view of applicant's amendment to limit its goods to "pants and shorts"] no item of Applicant's goods contains the two colors 'navy and green'...."³ (Applicant's reply brief, p.2). This argument is not persuasive. The deletion of certain items of clothing from the identification of goods does not make the mark any less descriptive. There is no restriction in the identification of goods which would limit the goods to clothing which is not navy and green in color. In the absence of any such restriction, it is presumed that the clothing

³ Applicant stated in its main brief (prior to the amendment) that "some" of its clothing "contain[ed] the color navy blue and the color green." (Applicant's brief, p.5). This statement as well as the statement in the above text also appear in two untimely declarations of applicant's President, Murray Deutsch, one of which was submitted with applicant's main brief and the other with its reply brief. In any event, as indicated above, these statements, even if true, would not change the decision herein. We also note Mr. Deutsch's statement in his second declaration that NAVY + GREEN "[was] never intended to be descriptive of any characteristic of the [clothing]." Suffice it to say that applicant's intentions with regard to the mark are not determinative.

may or may not appear in either or both of those colors.⁴ See, e.g., *In re Associated Theatre Clubs Co.*, 9 USPQ2d 1660 (TTAB 1988).

In view of the foregoing, we find that NAVY + GREEN when used in connection with applicant's goods, immediately describes, without any degree of thought or imagination, a significant characteristic of those goods.

Decision: The refusal to register is affirmed.

⁴ Moreover, a restriction of this nature could raise a question as to whether the mark is deceptively misdescriptive of the goods under Section 2(e)(1) of the Trademark Act.